

IN THE CIRCUIT COURT OF WETZEL COUNTY, WEST VIRGINIA
BUSINESS COURT DIVISION

MARKWEST LIBERTY MIDSTREAM
& RESOURCES, L.L.C.,
Plaintiff,

v.

CIVIL ACTION NO. 16-C-82
JUDGE H. CHARLES CARL, III

J.F. ALLEN COMPANY;
AMEC FOSTER WHEELER
ENVIRONMENT & INFRASTRUCTURE, INC.; and
REDSTONE INTERNATIONAL, INC.;
Defendants¹,

BENCH TRIAL ORDER
DAY TWELVE: OCTOBER 6, 2020

1. On the 6th day of October, 2020, this matter came on before the Court for a bench trial. By prior agreement of the parties, the Court conducted the bench trial in Hampshire County, West Virginia. The Plaintiff was present by its counsel Kevin L. Colosimo, Joseph M. Ward, and Jonathan G. Brill, and its in-house counsel Natalie Lien. Defendant J.F. Allen Company was present by its counsel Douglas C. LaSota and Nicole L. Carnevale and by its President, Greg Hadjis. Defendant Amec Foster Wheeler Environment & Infrastructure, Inc. was present by its counsel Vic L. McConnell and by its Lead Engineer Chris Ramsey. Defendant Redstone International, Inc. was present by its counsel Bruce E. Stanley and Michael A. Jacks, and by its President, Heath Kefover.

2. The Court inquired as to whether counsel had any objections to the Day Order from yesterday. Counsel had no objections and the Court then entered the Order.

3. Thereafter, Bryan Leatherman was re-called to the stand and his direct examination by Mr. LaSota continued.

¹ The remaining Defendants were dismissed, by agreement of the parties, prior to the bench trial.

4. Thereafter, Mr. Leatherman was subject to cross examination by Mr. McConnell, by Mr. Jacks, and by Mr. Ward.

5. Thereafter, Mr. Leatherman was subject to re-direct examination by Mr. LaSota.

6. Thereafter, Mr. Leatherman was subject to re-cross examination by Mr. McConnell and by Mr. Ward.

7. Thereafter, Mr. Leatherman was subject to re-re-cross examination by Mr. McConnell.

8. Thereafter, Mr. Leatherman was dismissed as a witness and is not subject to recall.

9. At this point, J.F. Allen rested with regard to its Counterclaim and Crossclaim.

10. Thereafter, Redstone made a Motion for judgment as a matter of law pursuant to Rule 52(c), Judgment on Partial Findings, of the West Virginia Rules of Civil Procedure and the Court heard argument from Mr. Jacks. Mr. LaSota did not oppose the Motion, with regard to the two tort claims. Therefore, the Court GRANTED the Motion as to the two tort claims.

11. Thereafter, Mr. LaSota moved for admission into evidence the following J.F.

Allen Exhibits:

1, 2, 3, 4, 5, 6, 7, 8, 8a, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 35a, 36, 37, 38, 39, 40, 41, 41a, 41b, 41c, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 71, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 90a, 90b, 91, 92, 93, 94, 95, 96, 97, 98, 101, 102, 103, 104, 105, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 133, 134, 137, 138, 139, 140, 143, 145a, 146, 147, 148, 149, 151, 152, 153, 154, 157, 158, 159, 160, 161, 162, 163, 164, 165, 167, 168, 169, 170, 171, 171a, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 184a, 184b, 184c, 185, 186, 187, 188, 189, 190, 190a, 191, 192, 228, 228a, 228b, 228c, 228d, 228e, 229, 230, 230a, 231, 232, 233, 234, 235, 236, 237, 238, 239, 241, 242, 243, 244, and 245.

12. Counsel for Amec and counsel for Redstone indicated they will move for admission of their exhibits at the conclusion of their respective case in chief.

13. The Court ORDERED counsel to confer, at the end of the trial, and submit joint exhibits in lieu of duplicative exhibits.

14. Amec, and Redstone had no objection to the admission of the J.F. Allen Exhibits.

15. MarkWest objected to the admission of J.F. Allen Exhibits 232, 233, and 234, based on those reports containing opinions that Mr. DiMaggio did not express in his testimony. The Court heard argument, which is more fully set forth on the record, from Mr. Colosimo, Mr. LaSota, and Mr. Stanley. Thereafter, the Court took the matter under advisement and recessed for a brief break.

16. After the break, counsel advised they had reached an agreement regarding expert reports: If the witness expressed an opinion on the witness stand, that opinion as set forth in the written report may be admitted into evidence; if the witness did not express an opinion on the witness stand, that opinion as set forth in the written report may not be admitted into evidence. Furthermore, counsel agreed that the Court may consider background information, charts, tables, backup data, and photographs as contained in the written reports of experts. The Court suggested that, at the conclusion of the trial, counsel redact any opinions in the written reports that the experts did not testify to on the witness stand.

17. Regarding MarkWest's Motion made yesterday to exclude the Slide Show and June 23, 2020, Report of Redstone's expert Dr. Bruce, the Court heard further argument, which is more fully set forth on the record, from Mr. Jacks and Mr. Colosimo. The Court ruled it will permit Dr. Bruce to testify as to the June 23, 2020 Report, which ruling is more fully set forth on

the record. Upon inquiry from Mr. Colosimo, the Court advised it will permit "spirited" cross-examination of Dr. Bruce.

18. Thereafter, Redstone proceeded with its case in chief. Mr. Stanley called Heath Kefover to the stand and he was duly sworn and subject to direct examination. During the testimony of Mr. Kefover, the Court recessed for a lunch break.

19. After the lunch break, the direct examination of Mr. Kefover continued.

20. Thereafter, Mr. Kefover was subject to cross examination by Mr. Ward and Mr. LaSota.

21. During cross examination by Mr. LaSota, the Court recessed for a brief break. Following the break, the cross examination continued.

22. Following cross examination by Mr. LaSota, Mr. Stanley put counsel on notice that two of Redstone's expert witnesses need to present their testimony tomorrow, so Mr. Kefover's testimony may have to be continued until after the testimony of the experts.

23. Thereafter, Mr. Kefover was subject to cross examination by Mr. McConnell.

24. At 4:47 p.m. the proceedings adjourned for the day. The Court and counsel agreed to start testimony at 8:30 a.m. tomorrow.

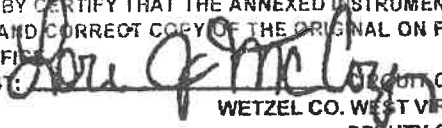
It is **ORDERED**:

- ❖ The Circuit Clerk shall send this Order to all counsel of record.
- ❖ The Court notes the objections and exception of the parties to any adverse findings or rulings herein.

ENTERED this 7 day of October, 2020.




H. CHARLES CARL, III, JUDGE
BUSINESS COURT DIVISION

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REBY CERTIFY THAT THE ANNEXED INSTRUMENT IS A TRUE AND CORRECT COPY OF THE ORIGINAL ON FILE IN MY OFFICE
ATTES: 
BY: _____
CLERK
WETZEL CO. WEST VIRGINIA
DEPUTY CLERK